

JUDICIAL ARSENAL

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No doubt the first weapon of choice to defend a court is the public's appreciation for the affairs of justice. The foremost benefit to be derived from this appreciation is the court's prestige. It is on the basis of this public's esteem and prestige attained that most judicial decisions get implemented. In most cases, the parties and the community voluntarily accept the judicial decision and agree to its implementation. However, there is an infinitesimal minority of cases in which this does not happen. In those cases, the judges resort to their judicial arsenal and choose the best weapon available to make justice prevail.

Oftentimes judges preside over a contentious hearing and issue an oral decision or a brief disposition in writing upon its conclusion. Aware that the court has the last word, litigants simply accept it. "You must be present at the hearing scheduled." "The court will not allow any further continuances." "Mister So-and-So shall deliver the documents described above to the opposing party." However, there are times when the litigious spirit calls for a lot more, and the judge is forced to issue a full-length opinion and judgment. This opinion is a powerful weapon used by the judicial branch to move the parties' social awareness and disposition to accept a decision.

Judges express themselves and offer their points-of-view through these well-founded opinions. When we write an opinion, we make sure to cover all grounds in a clear and convincing manner. It is appropriate to let the parties and the public know what were the facts that were proven and how the facts tie in to the principles of law on which

the decision is based. This is a highly efficient armament because, once read and studied by a thinking community, the decision itself strengthens the legal and social reasons to abide by it. Whenever we write an opinion, we adjust the written language to the circumstances. If something negative needs to be pointed out, we do so. If something positive, noble and equitable in one of the positions needs to be acknowledged, we proceed to do so, as well.

Occasionally the decision or opinion requires reinforcements. This is where the judges, under the right circumstances, take an affirmative step to enforce a decision, and the extraordinary recourse *par excellence* is the **injunction**. The injunction is a remedy that comes from the law of equity. It is a judicial order prohibiting an action by one of the parties. Its purpose is not to punish or impose a compensation for damages. The idea is to stop some damage or prevent additional damages. In order to get an injunction, the plaintiff must establish that he or she is suffering or will suffer irreparable harm and that there is no remedy to alleviate the situation. The purpose of an injunction is to balance the equities through an order to do something, or prohibiting something, and the implementation of said order must overcome the inconveniences or damages one of the parties or the public could suffer.

In the federal system, a judge can issue a preliminary injunction without a hearing that lasts for ten days, but cannot be extended for more than twenty days. The order is generally issued early on in the case to stop the wheels of time, freeze the actions of the parties, and give the court time to resolve on the merits. This preliminary injunction can only be extended and become a provisional remedy through a hearing on the merits and will never be permanent in nature unless the court holds a full trial.

The injunction is a very effective weapon when the goal is to stop an illegal government action. What would happen to John and Jane Doe if the government were to point its cannons at them inappropriately, while leaving them with no remedy — a détente of sorts that would stop the unbridled and unlawful official action?

Another high-caliber weapon is the *habeas corpus* remedy, or freedom remedy. This is a judicial order forcing the government to bring a prisoner — someone who has been deprived of his or her freedom — before the court, where the legality of the detention order must be justified. The *habeas corpus* protects all citizens from an illegal arrest or detention, and empowers the court to issue, in appropriate cases, a release order, further having the opportunity to point out the inappropriate conduct on the part of the executive branch of government when unlawfully detaining a citizen. Think how many travesties of justice would not take place if the courts did not have the power to bring in a detainee and force the government to justify the detention.

A third instrument available in the judicial arsenal is the power to punish for contempt. This is the ability to punish those who offend the dignity of a court or trample on the rights, benefits, or kindness of others even when there is a judicial order against it. Unfortunately, there are a handful of cases in which a judge, as a last recourse, invokes the power to punish for contempt when a judicial order is disobeyed or the judicial power is slighted.

Overall, there are two types of contempt: criminal and civil. Criminal contempt is nothing other than an offense against the dignity of the court, in open court and in the presence of the judge. Civil contempt takes place when a party or citizen refuses to comply with a judicial order, either through acts or omissions. In those cases, the remedy

is to deprive these people of their freedom, sending them to jail until they agree to obey and respect the judicial orders. In these cases, when a judge orders the detention, he or she also hands each detainee the keys to the jail cell, so to speak, the moment detainees are warned that the length of time during which they will be deprived of their freedom will depend on their assurance or pledge not to commit any further violations.

I confess that over the course of nineteen years on the federal bench I can count with the fingers on one hand the cases of contempt in my courtroom. And the sad part is that those who were found in contempt were neither habitual nor dangerous criminals. Most of these were committed by government officials and a handful of people who thought they had the right to raise their voice in open court, interrupt the work of the Marshals, and create an atmosphere of turmoil during the trials for trespassing on federal property in Vieques.

Finally, I wish to confirm what you already know. Judges do not have an army to do battle with anyone. Judges decide controversies in a logical manner and issue orders to implement a decision. We depend, in most cases, on the citizens' conscience for their implementation. In a community of law and order, in which we all respect other people's rights, we voluntarily assume the obligation to obey a judicial order. This happens because we acknowledge that, regardless of how imperfect justice may be, the courts are the ones called upon to establish order and recognize our rights and obligations.

In most cases, the arsenal barely comes into play and the smaller-caliber weapon of an oral order or a written decision is what is generally used. But let there be no doubt that in appropriate cases, we the judges do resort to heavy artillery. After all, we can enjoy our constitutional guarantees only if the sacrifices made by judges to serve society

are respected, valued, and appreciated. I have always said, and I repeat it once more, that after a few years no one will remember Judge So-and So. He or she retired from the bench and passed away. Another one was appointed in his or her place; but what we cannot sidestep is the acknowledgement that we would have no quality of life without courts and judges, and there would be no certainty of a legal standard for us to rely on for our own well-being.

*Translated into English by Janis Palma, USCCI, Official Staff Interpreter
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